sent them to various persons. For this she was found guilty of contempt. She now appeals to the House of Lords. *Held*, that the court had no jurisdiction to hear nullity suits in camera. *Scott* v. *Scott*, [1913] A. C. 417.

In early England the general public were required to pay a fee to gain admission to a court of law. 2 Bouvier's Law Dictionary (Rawle's edition), 548. But common-law courts are today generally open to the public. Nullity proceedings, however, were heard originally in the ecclesiastical courts, where witnesses were examined in private and their evidence taken by depositions. See SHELFORD, MARRIAGE AND DIVORCE, p. 522; CONSET, ECCLES PRACTICE, pt. 3, c. 4, § 3, (5). In 1857 such proceedings were transferred by statute to a new court of "Divorce and Matrimonial Causes." 20 & 21 VICT. c. 85, § 6. At first some doubt was expressed as to this court's right to conduct proceedings in private as the ecclesiastical courts had done. *Barnett* v. *Barnett*, 29 L. J. (P. & M.) 28 (1859); *H (falsely called C)* v. *C*, 1 Sw. & Tr. 605, 29 L. J. (P. & M.) 29 (1859). Later, however, it was decided that by § 22 of the act this new court inherited that power. See *C* v. *C*, L. R. 1 P. & M. 640 (1869); *A* v. *A*, L. R. 3 P. & M. 230 (1875); *D* v. *D*, [1903] P. 144. The present decision in turn overthrows this ruling. The House of Lords reasons that while § 22 declares the new court shall proceed as nearly as possible according to the rules of the former ecclesiastical courts, that § 46 providing that witnesses shall "be sworn and examined orally in open court" abolishes the practice of private examination and proceedings. In view of the express language of § 22, however, a better construction of § 46 would seem to be that while the cumbersome and expensive practice of taking depositions is to be changed to the more convenient *viva voce* testimony before a judge, the right of the judge to hear the testimony in private is not thereby abolished. But viewed merely as a common-law question it would seem that any court should have power at its discretion to hear in private testimony demoralizing to the public or embarrassing to a testifying witness. The House of Lords denies any such discretionary right, but lays down as a rule that private hearings should be given only in cases where the attainment of justice would otherwise be rendered doubtful. If this includes only cases of wardship, lunacy, and trade secrets, where private hearings have always been given, the rule laid down seems too narrow. Construed broadly, however, this language amounts practically to the granting of a discretionary power. Already this interpretation has been adopted by the English divorce court in a subsequent case where the public were ejected because a witness was visibly embarrassed by their presence. *Moosbrugger* v. *Moosbrugger*, 1913 T. L. R. 658. The House of Lords seems to fear that injustice may be caused by granting private hearings. But this objection is hardly valid where, as in the principal case, both parties desire such form of proceeding. In the United States divorce proceedings in many jurisdictions are regulated by statute. See *Cross* v. *Cross*, 55 Mich. 280; *Hobart* v. *Hobart*, 45 Ia. 501. But elsewhere it would seem that a judge should at least have the right in his discretion to hear such cases in private if the parties desire it.

HOMICIDE — DEFENSES — PROVOCATION — ILLICIT INTERCOURSE OF BETROTHED. — The defendant killed his betrothed in a passion aroused by her confession of illicit intercourse during their engagement. Under the instructions the jury was not permitted to reduce the crime to manslaughter on this account. *Held*, that the charge, in substance, was correct. *King* v. *Palmer*, [1913] 2 K. B. 29.

The existence of malice aforethought in a homicide case is as properly a matter of fact for the jury as the doing of the act. *Maher* v. *People*, 10 Mich. 212; see 1 EAST P. C. 222. But the English judges early laid down a rule which forbade the jury to infer absence of malice aforethought from the pro-

vocation offered by words of infamy or reproach. *Mawgridge's Case*, 17 Cobbett's St. Tr. 57. Words, which, in contradistinction to abusive epithets, are a mere vehicle to convey intelligence of the fact which actuates the crime, were not included in the original rule. So where the homicide of the husband is reduced by his having come upon his wife in the adulterous act, her confession of misconduct is recognized as having the same effect. See *Reg.* v. *Rothwell*, 12 Cox C. C. 145; *Rex* v. *Jones*, 72 J. P. 215. It is submitted that this should not be arbitrarily restricted to the case of a wife, but that where the killing immediately follows the discovery of a fiancée in such an act, or her confession of it, the jury should be permitted to find an absence of malice aforethought. The result which the court achieves can only be explained as a blind application of the rule of thumb that words in themselves are not sufficient provocation.

HUSBAND AND WIFE — RIGHTS AND LIABILITIES OF WIFE AS TO THIRD PARTIES — ALIENATION OF AFFECTION — NECESSITY OF MALICE. — The plaintiff's husband was induced to leave her, as a result of advice given to him by the defendant. The court below refused to instruct the jury that the wife need not prove malice on the part of the defendant in order to recover. *Held*, that the refusal was correct. *Geronimi* v. *Brunelle*, 102 N. E. 67 (Mass.).

Most jurisdictions now extend to a wife the protection which has always been afforded a husband in the analogous case, holding that she has a property right in the *consortium* of her spouse, for the deprivation of which she may bring suit under the married women's enabling acts. *Foot* v. *Card*, 58 Conn. 1, 18 Atl. 1027; *Warren* v. *Warren*, 89 Mich. 123, 50 N. W. 842. The intervention of the husband's voluntary act does not break the causation, for a result intended by the defendant cannot be considered remote. *Lumley* v. *Gye*, 2 E. & B. 216; *Angle* v. *Chicago, St. Paul, Minn., & Omaha Ry. Co.*, 151 U. S. 1. A *primâ facie* case thus having been made against him an affirmative justification is required of the defendant. *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598; *Walker* v. *Cronin*, 107 Mass. 555. Such justification has been universally predicated upon the affection which binds a parent and child or upon the duties of a guardian to his ward. *Huling* v. *Huling*, 32 Ill. App. 519; *Tucker* v. *Tucker*, 74 Miss. 93, 19 So. 955. But in the principal case there is no relationship upon which such a justification can be based. A true analysis of cases of this character shows that malice or motive becomes important only where there is a justification to be negatived. *Williams* v. *Williams*, 20 Col. 51, 37 Pac. 614; *Gernerd* v. *Gernerd*, 185 Pa. 233. However, the principal case seems to stand for the novel proposition that good motive in itself justifies a *primâ facie* wrong, which has been repudiated in the analogous case of procuring the breach of a contractual right. *S. W. Miners' Federation* v. *Glamorgan Coal Co.*, L. R. (1905) A. C. 239. There seems to be no logical reason for distinguishing the two wrongs so as to make such a fundamental difference in the nature of the defenses allowed.

ILLEGAL CONTRACTS — CONTRACTS SUPPORTED BY AN ILLEGAL OR IMMORAL CONSIDERATION — CESSATION OF ILLICIT COHABITATION — The plaintiff, having lived in illicit cohabitation with the defendant, agreed under seal to pay over to him certain money. This seems to have been in return for the defendant's promise to marry her. The defendant refused to marry her, and the plaintiff seeks to have the agreement to pay the money cancelled. *Held*, that cancellation will not be decreed, the contract being void. *Pepperas* v. *Le Duc*, 24 O. W. R. 563, 4 O. W. N. 1208.

Where future illicit cohabitation is the consideration for a contract, such is void as against public policy. *Potter* v. *Gracie*, 58 Ala. 303. But a promise made during illicit cohabitation is not necessarily tainted. *McGuitty* v. *Wilhite*,